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June 3, 2005

VIA EMAIL AND U.S. MAIL

Mr. Brad C. Deutsch, Esquire
Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

2005 JUN 13 A 11: 0

Re: A Detailed Comment by the National Rifle Association in response to the Federal Election Commission's Notice of Proposed Rulemaking 2005-10 on Internet Communications, 70 Fed. Reg. 16,967 (Apr. 4, 2005).

Dear Mr. Deutsch,

Because the proposed regulation violates both the First Amendment's guarantee of free speech and Congressional intent, the National Rifle Association ("NRA") submits this comment opposing the proposed rulemaking. Responding to the district court's decision in *Shays v. Federal Election Commission*, 337 F.Supp. 2d 28 (D.D.C. 2004), the Federal Election Commission ("FEC") proposes to include paid advertisements on the Internet in the definition of those "public communications" that fall within the federal funding provisions of the Bipartisan Campaign Reform Act of 2002 ("the Act" or "BCRA"). *See* Internet Communications, Notice of Proposed Rulemaking 2005-10, 70 Fed. Reg. 16,967-68 (Apr. 4, 2005). The NRA respectfully submits, however, that such implementation of the district court's decision renders BCRA, as applied to the Internet, constitutionally infirm.

The Supreme Court has repeatedly emphasized that political speech can be regulated only where strict scrutiny has been satisfied. *See, e.g., Buckley v. Valeo*, 424 U.S. 1 (1976). Specifically, Congress must find that regulation of political speech serves a compelling governmental interest. Here, it is undisputed that Congress made no finding that regulation of political speech on the Internet serves any governmental interest, let alone, a compelling governmental interest. In fact, the legislative history confirms what the text unambiguously suggests: Congress was unwilling to infringe on the unique marketplace of ideas provided by the Internet and its innate democratizing force. Instead, Congress designed and drafted the Act with the purpose of excluding the Internet from its requirements unless clearly indicated to the contrary. *See, e.g.*, 144 CONG. REC. S947, S973-74 (daily ed. Feb. 25, 1998) (statement of Sen. Snowe).

Moreover, the Congressional intent to allow unfettered political discourse on the Internet comports with the First Amendment's guarantee of free speech. The Supreme Court has recognized that the Internet is a unique forum. It is the ultimate marketplace of ideas. And any regulation of internet communication must receive the courts' strictest scrutiny. *See Reno v. ACLU*, 521 U.S. 844, 870 (1997) (striking down the Communications Decency Act for violating the First Amendment). In fact, the *Reno* Court stressed that the Internet ought to be accorded greater protection than broadcast communications, as the justifications for broadcast media regulation – including the "history of extensive government regulation," the "scarcity" of the spectrum, and the "invasive" nature of broadcast media – simply "are not present in cyberspace." 521 U.S. at 868-69. The "dramatic expansion of this new marketplace of ideas" and "[t]he interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship." *Id.* at 885; *see also Zeran v. America Online, Inc.* 129 F.3d 327, 330 (4th Cir. 1997) (discussing the need to keep "government interference in the medium to a minimum" to "maintain the robust nature of the Internet communication."); Stephen C. Jacques, Comment, *Reno v. ACLU*: Insulating the Internet, The First Amendment, and the Marketplace of Ideas, 46 AM. U. L. REV. 1945, 1947 (1997) (the internet "provides an outlet for a cacophony of ideas with virtually no geographic, economic, social, or political restraints, giving a voice to the People in a way the Constitution's Framers could only have dreamed possible."). The district court in *Shays* failed to address the constitutional scope of the regulatory regime at issue. Yet that failure does not absolve the FEC of its responsibility to enact regulations that adhere to the values enshrined in the First Amendment and expounded by the Supreme Court's jurisprudence.

In sum, Congress has clearly indicated the desire to free the Internet from the Act's provisions. And the Supreme Court has confirmed that the Internet deserves heightened First Amendment protection. Although the FEC envisions the current regulation as merely an "extremely limited" step, Internet Communications, 70 Fed. Reg. at 16,969, it is a step that treads on cherished constitutional principles enshrined in the First Amendment; and it is a step that threatens to breathe the life out of the fertile "democratic fora" provided by the Internet. *See Reno*, 521 U.S. at 868. The Constitution does not allow such interference with political speech.

Sincerely,

David H Thompson / by Kathryn S. Wheelbarger

David H. Thompson